IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Bail Appl..No. 5482 of 2007()

CRIME NO.36/07 OF EXCISE RANGE OF KUMBLA.

PETITIONER/ACCUSED:

KAMALA, AGED 37 YEARS,
D/O.THUKKRU, RESIDING AT PERUVODI HOUSE,
BAYAR VILLAGE, KASARAGOD DISTRICT.

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
THROUGH EXCISE INSPECTOR, KUMBLA RANGE,
REP. BY ITS PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5482 OF 2007

Dated this the 11th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner – a woman, faces allegations under the Kerala Abkari Act. She was allegedly found to be in possession of 40 x 180 ml. of Indian Made Foreign Liquor which can lawfully be sold only in Karnataka. The detection was on 2/8/07. The seizure was effected; but the petitioner could not be arrested as the detecting Excise party did not consist of any woman official. The petitioner apprehends arrest at any moment.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. It is prayed that directions under Sec.438 of the Cr.P.C. may be issued in favour of the petitioner.

3. The learned Public Prosecutor opposes the application. There are no circumstances justifying the invocation of the

discretion under Sec.438 of the Cr.P.C. This is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course, submits the learned Public Prosecutor. I find merit in the opposition by the learned Public Prosecutor. I am satisfied that there are no features in this case which would justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. I agree with the learned Public Prosecutor that this is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

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(R. BASANT, JUDGE)

//true copy// P.S. to Judge